Exhibit R

Attorney(s) for

SUPREME COURT OF THE STAT COUNTY OF NEW YORK	E OF NEW YORK	
Indictment No. 2231	Year 2004	
PEOPLE OF THE STATE OF NEW	YORK,	
against		
ROBERT ANGONA		
Defend	lant.	
MOTION TO VACATE	E JUDGMENT AND SET	ASIDE SENTENCE
CHA	Law Offices of ARLES ANDREW MILLE Attorney for Defendant 105-15 Cross Bay Blvd Ozone Park, NY 11417 (718) 323-6303	ER SSecurity 150-76-9637
То:		
Attorney for		
Service of a copy of the within		is hereby admitted.
Dated,	******	

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK: PART 41

THE PEOPLE OF THE STATE OF NEW YORK

NOTICE OF MOTION TO VACATE JUDGMENT AND SET ASIDE SENTENCE

-against-

ROBERT ANGONA

IND. NO.:2231/2004

Defendant

PERSONS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of CHARLES A. MILLER, ESQ., dated the 1ST day of June, 2006, and upon all the papers and proceedings heretofore had herein, the undersigned attorney will move this Court, at a Supreme Court Term, Part 41 thereof, to be held in and for the County of New York, New York, at the Courthouse located at 100 Centre Street, NY, on the 15th day of June, 2006 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as Counsel can be heard for an Order granting the following relief:

- 1. Pursuant to Criminal Procedure Law (CPL) 440.10 and 440.20, vacating the judgment and setting aside the sentence of the Court upon the ground that:
- a. The Court did not have jurisdiction of the action or of the defendant (CPL 440.10(1)(a));
- b. The judgment was obtained in violation of a right of the defendant under the Constitution of the State of New York and of the United States (CPL 440.10(1)(h));
 - c. New evidence discovered since the entry of judgment

is of such character that it creates a probability that had such evidence been received prior to the judgment in this case there would have been a more favorable disposition for the defendant (CPL 440.10 (1)(g)).

2. And for such other and further relief as to this Court may seem just and proper, or may become appropriate as a result of information disclosed pursuant to this motion.

A previous application for the relief sought herein has been made to this Court by the defendant, appearing pro se; however counsel for the defendant has not been afforded a prior opportunity to raise the specific issues mentioned in this motion or to provide attached supporting documentation.

No hearings on this motion have heretofore been held before this court.

DATED:

-

QUEENS, NEW YORK June 8, 2006

CHARLES A. MILLER

105-15 Cross Bay Blvd Ozone Park, N.Y. 11417

BY: Charles A. Miller, ESQ.

Attorney for Defendant

TO:

ROBERT MORGANTHAU District Attorney New York County

Clerk of the Court New York County-Part 41 SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK: PART 41

THE PEOPLE OF THE STATE OF NEW YORK

AFFIRMATION

-against-

IND. NO.:2331/2004

ROBERT ANGONA

Defendant

CHARLES A. MILLER, an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury as follows:

- 1. I am fully familiar with the facts and circumstances of this case, and make this affirmation in support of defendant's motion herein.
- 2. Unless otherwise specified, all allegations made in this affirmation are made upon information and belief, and are based upon inspection of the Court records of this case, conversations with the District Attorney's Office, conversations with the defendant, and your affiant's own investigation.

MOTION TO VACATE JUDGMENT AND SET ASIDE SENTENCE

3. The defendant respectfully moves this Court to vacate the judgment and set aside the sentence of this Court that was entered on October 29, 2004, on the grounds that the court did not have jurisdiction over the matter or the defendant, the defendant was denied an important right afforded him under the laws of New

York and the U.S. Constitution, and newly discovered evidence after the entry of the aforementioned judgment would have resulted in a more favorable outcome for the defendant had it been known earlier.

- 4. Pursuant to Criminal Procedure Law (CPL) section 210.35(4), the grand jury indictment in this matter was defective, thus precluding the Court of jurisdiction of the matter, because the defendant was not afforded an opportunity to appear and testify before the grand jury in accordance with the provisions of CPL section 190.50. The defendant, under both Article I section 6 the New York State Constitution and the Fifth Amendment to the U.S. Constitution, is entitled to a proper presentment of charges before a grand jury before a court has jurisdiction over such offenses. In this instance, both CPL 190.50(5)(c) and CPL 210.20 require that said indictment be dismissed.
- 5. CPL 190.50(5)(a) states that a defendant, prior to the filing of any indictment against him, has a right to be a witness in a grand jury when criminal charges have been submitted to such a grand jury. A defendant who has a felony complaint pending against him is entitled to reasonable notice by the district attorney of his right to testify and given a reasonable time to exercise his right to appear. People v. Smalls, 488 NYS2d 712 (1st Dep't 1985); People v. Luna, 486 NYS2d 839 (Sup. Ct., Queens County, 1985), aff'd 514 NYS2d 806 (2d Dep't 1987).
 - 6. While a defendant is normally required to provide

written notice of his intent to testify, otherwise known as cross 190.50 notice, written notice requirements have been waived where a defendant was not afforded a "reasonable time to exercise his right to appear." People v. Gini, 421 NYS2d 269 (2d Dep't 1979); People v. Spence, 526 NYS2d 747 (Sup. Ct., Kings County, 1988). In this instance, the defendant was arrested on April 23, 2004, on a felony complaint. See Exhibit A. The defendant was immediately hospitalized for a heart-related condition and was denied counsel for ten (10) days. During this period of time, the District Attorney's Office failed to arraign the defendant. Notwithstanding, they presented said matter to a Grand Jury and obtained a voted indictment on April 28, 2004. See Exhibit B. Prior to voted indictment, the defendant was never arraigned at the hospital, which is routinely done, never assigned an attorney, and he was not provided with the requisite notice of his right to testify before said grand jury.

7. On May 3, 2004, the defendant was brought to New York County Criminal Court and finally arraigned on the aforementioned felony complaint. Unbeknown to the court or the defendant, the District Attorney announced and filed the grand jury indictment. The District Attorney's Office did not provide the defendant with prior notice of his right to testify, nor did they indicate that they were keeping the grand jury open to accommodate the defendant's testimony. Prior to the pronouncement, court personnel asked the defense counsel if she

had apprised the defendant of his grand jury rights. She replied in the affirmative. See Exhibit C. Counsel for the defendant complained on the record of the indictment proceedings occurring, "without the [defendant having the] benefit of being represented and not having the opportunity to testify". Id.

8. The Court, in its January 17, 2006 decision of the defendant's pro se motion on this matter, stated, "this is the first time defendant is complaining about a violation of his CPL 190.50 rights." The Court cites the rule under CPL 190.50(5)(c) that requires a defendant to make such a motion not more than five (5) days after a defendant has been arraigned upon the indictment. Respectfully, the defendant did raise the violation of his CPL 190.50 rights prior to his plea, and at the precise time that the indictment was being filed with the court. While such a motion was not raised in writing prior to these CPL 440.10 applications, defense counsel on May 3, 2004, did assert the defendants right to testify before the grand jury and complained of his inability, up to that point, to exercise that right.

Interestingly, even the court personnel during the arraignment, in requesting whether the defendant had been apprised of his 190.50 rights, assumed that he was still entitled to testify before the grand jury. The District Attorney's Office never allowed the defendant to testify and it circumvented his arraignment until after the presentment of the case to the grand

jury.

- 9. The District Attorney's failure to provide reasonable notice or an opportunity for the defendant to testify before the grand jury makes the indictment in this matter defective. Furthermore, the defendant's assertion, at his May 3 arraignment, of his 190.50 rights, were sufficient, under the full context in which they were given, to constitute a motion to dismiss the indictment on those grounds. The defendant satisfied the parameters of CPL 190.50 (5)(c). Therefore, the indictment should have been dismissed.
- discovered evidence has come to the attention of the defendant that had it been known prior to the entry of a plea or the entry of judgment a more favorable outcome would have been obtained by the defendant. This evidence is highly credible and the defendant used due diligence to obtain such favorable information toward his defense. Cf. People v. Barrero, 524 NYS2d 834 (2d Dep't 1988). Attached please find two letters that address the amount of theft initially believed to be at issue in this matter. A September 29, 2004, letter from Stuart Pivar, New York Academy of Arts (NYAA) Chairman emeritus, to the Court, indicates an alleged theft of only \$30,000 by the defendant, an amount below the "C" Felony threshold. See Exhibit D. Then, a January 6, 2005, letter to the defendant's wife from a law firm representing the insurance company that insures NYAA claims that

the defendant owes \$34,248.00, an amount that corroborates the lower threshold figure of Stuart Pivar listed above. See Exhibit E. Notwithstanding these glaring discrepancies from the higher amount alleged in the original complaint, the most compelling piece of newly discovered evidence that fully exculpates the defendant is the December 15, 2004, response by Wayne A. Linker, Executive Director and Trustee of the NYAA, to interrogatories presented to him by the Attorney General's Office of the State of New York. Mr. Linker was specifically asked about any wrongdoing by the defendant as it pertained to whether NYAA's "restricted assets were in any way impaired or misappropriated during the period that Robert Angona was rendering services to the NYAA " Mr. Linker's responds that after a thorough investigation by a respected private investigative firm, an audit by NYAA's regular auditors, and a review by a forensic accountant, "none of these investigative reviews have identified any inappropriate actions by Robert Angona with regard to the Academy's endowment." This shellshocking piece of information was conveniently disclosed by NYAA through its legal counsel, Douglas Grover, to James R. Pigott, Jr., Assistant Attorney General of the State of New York, roughly one month after the defendant was sentenced. This exculpatory evidence was obtained by Stuart Pivar via a Freedom of Information Law request, dated February 15, 2006, and then shared with the defendant. A copy of the February 21, 2006 FOIL

response, from Stacey Rowland, Assistant Attorney General of the State of New York, with the applicable interrogatory included, is attached as Exhibit F.

If the New York County District Attorney's Office was aware of such exculpatory information from NYAA and its representatives prior to the plea or sentence in this matter, such failure to disclose would constitute a serious breach of ethical and professional responsibility and be a violation of the defendant's due process rights under the New York State and U.S. Constitution. See Brady v. Maryland, 373 U.S. 83(1963); People v. Vilardi, 556 NYS2d 518 (1990). If such information was not known to the DA's office at the time of plea or sentence, or up to now, this newly discovered information should raise serious questions as to whether the prosecution of this matter was ever warranted.

At the time of his plea and at the time of sentence, the defendant was not aware of these investigations by the NYAA or its representatives. It seems implausible that NYAA would only determine that the defendant had committed no wrong doing at just around the time he was being sentenced. The more likely scenario is that NYAA and its investigative arms knew of this exculpatory information well prior to the defendant being sentenced and they never disclosed it to the court, the DA or defense counsel. The information was material in the felony disposition realm. The defendant was indicted and offered a "C" Felony. This evidence,

now available to the defendant, strongly suggests that no evidence existed to substantiate any charge against the defendant.

Defendant's guilty plea seems to stem from the enormous pressure placed on him to either accept responsibility for the baseless allegations or risk the arrest of his innocent wife. In a June 29, 2004, letter from the defendant's attorney to the assigned assistant, he offers the defendant's cooperation on other uncharged improprieties at the NYAA. See Exhibit G. This cooperation was clearly aimed at attempting to thwart the District Office's stated intention of Attornev's prosecuting the defendant's wife if he did not accept responsibility for the alleged wrongdoing. This would explain the defendant's willingness to plead guilty, as he sought to protect another innocent person and because he was devoid, at the time, of exculpatory evidence in his defense. His prior criminal history would have precluded him from being considered a credible witness at any trial.

Lastly, although it is not one of the enumerated factors for the court to consider in its CPL 440.10 determination, the defendant's health is seriously declining. His physician at Upstate Medical University cites the defendant's cancer condition as "ultimately incurable" and that it is "unlikely that he will live more than five years, and he certainly could deteriorate much sooner." See Exhibit H. It is one thing for a potentially innocent man to remain incarcerated and await release at some point in the future; it is a far more serious and time-sensitive matter for

such an individual to become deceased while he awaits such release.

10. The defendant respectfully requests that the motion to vacate judgment be granted on the grounds that the court never had proper jurisdiction over this matter, that the defendant was denied a right under the Constitution of both New York State and the United States, and newly discovered evidence after the entry of judgment would have likely changed the disposition in this matter.

RESERVATION CLAUSE

The defendant respectfully requests the right to make any and all further motions, as many as may be necessary, based upon information and disclosure which may result from the granting of requests made herein and/or information received from any record within a reasonable time. [CPL §255.20(3)].

That no prior application for the relief herein sought has heretofore been made by the undersigned counsel.

WHEREFORE, it is respectfully prayed that the motion herein be, in all respects, granted and for whatever relief the Court may deem just and proper.

DATED: QUEENS, NEW YORK June 8, 2006

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CHARLES A. MILLER, ESQ.

EXHIBIT A

THE PEOPLE OF THE STATE OF NEW YORK -against-

1. Robert Angona (M 63)



Defendant.

FELONY ADA RUZOW 212-335-4163



Detective Gerard Quinn, shield 05564 of the DA Squad NY County, states as follows:

At the times and places described below in the County and State of New York, the defendant committed the offenses of:

PL155.40(1) Grand Larceny in the Second Degree (1 count)

2. PL205.30 Resisting Arrest (1 count)



Page 1 of 2

the defendant stole property valued in excess of 50,000 dollars; and the defendant intentionally attempted to prevent a police officer or peace officer from effecting an authorized arrest of

The offenses were committed under the following circumstances:

Deponent states he is informed by Michael Dandrade, of the Corporate Frauds Department at MBNA, that the New York Academy of Art account was opened in October 2003, with two cards issued on the account, one to Stephen Farthing and one to Sandra April. Informant further states that a third card in the name of Robert Angona, was called in in November 2003. Informant further states that between December 2003 and April 2004, defendant charged in excess of \$29,000 on the above mentioned account.

Deponent further states he is informed by Stephen Farthing, the executive director of the New York Academy of Art, that defendant Robert Angona had no permission or authority to obtain said credit card or to charge in excess of \$29,000 on said card. Informant Stephen Farthing further states that between August 2003 and April 2004, six checks totaling in excess of \$40,000 were written to a company called Empire Solutions but no matching invoices could be located. A check of the New York Department of State shows that Empire Solutions is a company controlled by defendant Angona's wife Shirly Allyn and Empire Solutions is not an authorized vendor known to the New York Academy of Art.

ADA RUZOW 212-335-4163

ROLL NO BONG



Defendant.

Deponent further states that when he approached the defendant and identified himself as a police officer, defendant turned and ran away. Defendant then refused to place his hands behind his back and elbowed, pushed and shoved another assisting police officer at the scene, and refused to be handcuffed.

False statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.

Denonent

Date and Tim

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EXHIBIT B

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CRIMINAL COURT OF THE CITY OF NEW YORK COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Robert Angona,

Defendant.

CERTIFICATE OF AFFIRMATIVE GRAND JURY ACTION

Docket No.

Elyse Ruzow, an Assistant District Attorney in the County of New York, certifies that the Grand Jury has heard evidence in the above-captioned case and has voted an indictment or a direction to file a prosecutor's information charging defendant with one or more offenses based upon the conduct alleged in the felony complaint.

Dated: New York, New York April 28, 2004

Elyse Ruzow

Assistant District Attorney

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ROBERT ANGONA,

Defendant.

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendant of the crime of **GRAND LARCENY IN THE SECOND DEGREE**, in violation of Penal Law §155.40(1), committed as follows:

The defendant, in the County of New York, during the period from August 1, 2003 through April 30, 2004, stole property from New York Academy of Art and the value of the property exceeded fifty thousand dollars.

ROBERT M. MORGENTHAU District Attorney

EXHIBIT C

1	
2	CRIMINAL COURT OF THE CITY OF NEW YORK
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4	THE PEOPLE OF THE STATE OF NEW YORK,
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6	
7	- against -
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9	
10	ROBERT ANGONA,
11	HODERT ANGUNA,
12	
13	Defendant.
	X
14	100 CENTRE STREET NEW YORK, NEW YORK MAY 3, 2004
15	BEFORE:
16	HONORABLE PATRICIA NUNEZ,
17	JUDGE.
18	A P P E A R A N C E S: ROBERT MORGENTHAU, ESQ.,
19	DISTRICT ATTORNEY, NEW YORK COUNTY BY: CAREY NG, ESQ.,
20	Assistant District Attorney
21	LEGAL AID SOCIETY
22	BY: MONICA WHITE, ESQ., Attorney for defendant
23	
24	DANIEL KOCHANSKI,
2.5	Official Court Reporter

- THE COURT OFFICER: Docket ending 854, Robert
- 2 Angona.
- 3 The defendant is charged with Grand Larceny
- 4 in the second and resisting arrest.
- The sworn complaint is signed.
- 6 Counsel, do you waive the reading of the
- 7 rights and charges but not the rights thereunder?
- 8 MS. WHITE: Yes.
- 9 THE COURT OFFICER: Did you advise your
- 10 client of his 190.50 rights?
- MS. WHITE: Yes.
- MR. NG: Your Honor, the People are filing a
- 13 certificate of affirmative Grand Jury action on the
- 14 Court.
- The People are requesting bail in this case
- 16 in the amount of \$75,000 plus a 72-hour surety.
- The People, for the record, filed a
- 18 certificate of affirmative Grand Jury action. The
- 19 People are also requesting remand in this matter.
- The defendant worked as a bookkeeper at the
- 21 New York Academy of Arts for over two years, and an
- 22 investigation by the organization revealed that the
- 23 defendant had written \$40,000 in checks to a company
- 24 called Empire Solutions. That company in fact is owned
- 25 by his wife, and there are no matching invoices for any

- 1 of that money.
- Your Honor, this defendant had been indicted
- 3 for Grand Larceny in the Second Degree.
- 4 Your Honor, at the time of arrest this
- 5 defendant refused to give his date of birth or social
- 6 security number.
- 7 Upon investigation it turned out that this
- 8 defendant's name is fictitious. The defendant's name
- 9 is John Blue. His social security number was issued in
- 10 1956 and was subsequently changed to another name, John
- 11 Blue, back in 1996.
- 12 This defendant currently has -- is a
- 13 predicate felon and faces three to six years in
- 14 prison.
- THE COURT: He is a predicate felon?
- 16 MR. NG: My information indicates he has a
- 17 conviction for Larceny in 1992, Larceny and Fraud in
- 18 1991 and Fraud in 1981.
- 19 Your Honor, this defendant is currently
- 20 wanted by the Federal Government in Atlanta for a
- 21 probation violation, and that's a mail fraud case.
- It's the People's position that this
- 23 defendant poses a clear flight risk. This defendant
- 24 ended his lease on his offices two weeks ago and
- 25 informed the landlord that he was leaving for

- 1 California and informed his co-workers he was departing
- 2 for California.
- For the reasons previously stated, your
- 4 Honor, the People are requesting remand in this
- 5 matter.
- 6 MS. WHITE: Judge, we are asking you to
- 7 release Mr. Angona on his own recognizance or set much
- 8 more reasonable bail.
- 9 One of the facts the DA named is that Mr.
- 10 Angona allegedly gave false information to the police.
- 11 At the time Mr. Angona was arrested he was suffering
- 12 from congestive heart failure and he was arrested a
- 13 week ago Friday, I believe the 23rd, and spent the
- 14 entire last week in Cornell Hospital where he received
- 15 a shunt in his heart and also a pacemaker. He was in
- 16 the hospital the whole time, that is why I imagine that
- 17 the People have been able to indict him without him
- 18 being represented. Although he was arrested last
- 19 Friday, he was not arraigned until today.
- 20 His family is in the audience. His wife and
- 21 his daughter are sitting here today. They verified
- 22 they he lives at 405 East 54th Street, Apartment 7B,
- 23 and also gave a phone number.
- Mr. Angona denies that he was involved in any
- 25 illegal activity at work, the Academy of Arts. He is a

1 chief financial officer there.

- 2 He strongly believes that the evidence will
- 3 show that every transaction he was involved in was
- 4 legal and authorized by the corporation, and if there
- 5 is something else going on in the corporation, it is
- 6 causing them to blame him.
- 7 I believe that the DA said he -- I asked him
- 8 about his record. I don't believe he is a predicate.
- 9 The DA said his convictions were over ten years ago. I
- 10 think that it is a close call in that case.
- Because of the circumstances in this case,
- 12 where he did suffer greatly after his arrest, and he
- 13 also currently has leukemia and diabetes and he spent
- 14 the last week in the hospital and the People did
- 15 indict, perhaps legally but without the benefit of
- 16 being represented and not having the opportunity to
- 17 testify, and because he is probably not --
- 18 THE COURT: All right, based on the
- 19 representation by the People, he will be remanded.
- 20 Medical attention is ordered.
- What part does this case go to, People?
- MR. NG: Part 60, your Honor.

23

24

25

THE COURT: Part 60, May 17th for Supreme Court Arraignment. CERTIFIED to be a true and accurate transcript of the proceedings. Daniel Kochanski, Official Court Reporter

EXHIBIT D

September 29, 2004

Honorable Ronald A. Zweibel NY State Supreme Court 100 Centre Street Room 1116 New York, NY

Your Honor,

The arrest of Robert Angona for the theft of \$30,000 finally exposed the years-long Ine arrest of Kodert Angona for the then of \$30,000 maily exposed the years-long evidence of fraude I discovered his identity. Findled is envery testimony cioned evidence of frauds. I discovered his identity. Enclosed is sworn testimony, signed affidavits and relevant documents. The real criminals are the trustees who employed him.

Angona is a predicate felon, who will go to jail for federal parole violation. Granted immunity ha will rayast the aveant of the crimac of which the chidante are eventually Angona is a predicate ielon, who will go to Jail for lederal parole violation. Granted immunity he will reveal the extent of the crimes of which the students are eventually Please see www.tegentsp

Sincerely

Stuart Pivar NYA

Chairman emeritus

EXHIBIT E

Page 30 of 59 Document 28-6 Filed 07/20/2007



WENIG & WENIG

ATTORNEYS AT LAW 150 BROADWAY SUITE 911 NEW YORK, NEW YORK 10038

> **TELEPHONE** (212) 374-9840 TELECOPIER (212) 374-9844

January 6, 2005

LARRY WENIG ALAN WENIG . CHRISTOPHER J. SOLTYS

JOHN M. PICCIRILLO 4 JOSEPH W. SZALYGA

DEBRA L. KALMORE A OF COUNSEL

ALSO ADMITTED IN PA. VALSO ADMITTED IN NJ

Ms. Shirly Allyn 405 East 54th Street Apt. 7B New York, New York 10022

Re: OneBeacon Insurance Company a/s/o The New York Academy of Arts

v. Robert Angona a/k/a John Blumatte and Shirly Allyn

Your File No.: 74100348 Our File No.: CU2151 Amount Owed: \$34,248.00

Dear Ms. Allyn:

Please be advised that our firm has been retained by OneBeacon Insurance Company to pursue collection from you in the amount stated above.

The above amount owed arises from certain funds embezzled from The New York Academy of

Accordingly, it is requested that you forward payment directly to my office, drawing your check payable to the order of OneBeacon Insurance Company and Wenig & Wenig, Esqs., as attorneys.

Please be advised that if payment is not received within ten (10) days from the date of this letter. appropriate legal action will be taken.

Guide yourself accordingly.

Very truly yours,

CHRISTOPHER J. SOLTYS

CJS:sr

EXHIBIT F



STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER Attorney General

> KERMITT J. BR Deputy Attorney Gener

STACEY B. ROI Records Access

February 21, 2006

Mr. Stuart Pivar 15 West 67th Street New York, NY 10023

RE: Freedom of Information Law (FOIL) #05540 Dear Mr. Pivar:

This is in response to your letter dated February 15, 2006 regarding the above FOIL request. We are in receipt of your check in the amount of \$18.25.

Enclosed are documents 05-540-0001 through 05-540-0078 which you requested. This FOIL request is now closed.

B. Rowland ant Attorney General

Enclosure

CINCINNATI

CLEVELAND COLUMBUS DAYTON NEW YORK

December 15, 2004

BY HAND

James R. Pigott, Jr. Assistant Attorney General State of New York Office of the Attorney General New York, New York 10271

RE: New York Academy of Art Endowment Fund Inquiry: document production

Dear Mr. Pigott:

Enclosed please find documents responsive to the above-mentioned request for documents and interrogatories, returnable December 15, 2005.

At the top of the production is Wayne Linker's analysis and answers to your inquiries about the "endowment" funds. Behind that are a series of schedules, prepared by or for Mr. Linker to assist you in this inquiry. Finally, backup documentation, to the extent available, has been gathered and included as well.

We have not included copies of the Academy's Internal Revenue Service Form 990 Tax Returns, including annual financial statements, for the years 1998 through 2002, but they can be can be provided to you if requested. If you have any questions, please do not hesitate to call me.

Very truly yours,

Douglas.Grover@ThompsonHine.com Phone 212.908.3920 Fax 212.809.6890 THOMPSON HINE LLP



HRH THE PRINCE OF WALES, PATRON

December 10, 2004

Response to the Letter of Inquiry, Dated 1 November, 2004, from Assistant Attorney General Robert Pigott, Charity Bureau, New York Attorney General's Office

- 1. The NYAA reports permanently restricted net assets on its IRS Form 990. With respect to such permanently restricted net assets:
- (i) Identify each separate fund or gift that makes up the total permanently restricted net assets, and for each such separate fund or gift identify (a) the nature of the restrictions to which the fund or gift is subject, (b) historic dollar value within the meaning of N-PCL 103(a)(16) and (d) the current market value.

Exhibit 1, attached, reflects the breakdown of each of the gifts/funds related to the information that has been reported on the Academy's IRS Form 990 in recent years. As my tenure with the Academy began on August 16, 2004, with the assistance of the Academy's accountant, I reviewed files and gift records relating to each of the funds which had been reported as "permanently restricted net assets." By and large, most of the funds, while often gifts to the "endowment" of the Academy, do not appear to have been made as "permanently restricted" by the donors, as defined under accounting rules. (See individual correspondence submitted herewith.)

In late 1997, Academy staff and trustees initiated a small fundraising campaign, the goal of which was to raise \$5 million for an endowment. Two phases of the campaign were envisioned: first, securing \$2 million in gifts and pledges from the members of the board of trustees of the Academy; and second, "going public" to raise the balance of funds from other sources. It appears that the Academy never implemented phase 2 of the fundraising effort.

In the letters that I reviewed regarding the campaign, it appears that the request was for funds for a capital campaign or an endowment fund, and no mention has been found of solicitations seeking "permanently restricted funds". Conversations with the trustees who were on the board in 1997-99 as to the nature of the endowment campaign indicated that it was a very broad fundraising effort, and while it was hopeful that the proceeds from the campaign would generate annual income to sustain the institution, it was also envisioned

that these funds would constitute an operating reserve, an emergency fund and a source of funding for certain capital improvements.

By and large, the nearly \$1.6 million reported as permanently restricted funds in fact appear to be gifts given in support of an "unrestricted or board restricted endowment or quasi-endowment fund" as few donors indicated a restriction on principal or a purpose for the gift aside from "the campaign" or "the endowment". In some cases there were restrictions on the use or purpose of the funds (Temporarily Restricted gifts and grants), but the Academy seems to have directed these gifts as well to the endowment. In a number of instances, based on the gift award letters, the gifts or grants appear to be totally unrestricted.

Based on these findings, I spoke with the Academy's auditor (in her 7th year of service to the Academy and thus covering the entire period during which "permanently restricted" funds were reported in the audit report and the IRS Form 990.) She appears to have accepted staff statements that these funds were permanently restricted gifts based on the use of the term "endowment," which in her mind is/was synonymous with "permanently restricted endowment". I have been unable to determine why certain gifts or grants which were clearly intended for operating purposes or were fully unrestricted by the donor were classified as "permanently restricted" on the IRS Form 990 or in the Academy's audit.

ANNOTATED DESCRIPTIONS OF GIFTS, DONATIONS AND GRANTS TO THE ACADEMY'S ENDOWMENT FUND AS LISTED IN IRS FORM 990

Several gifts were made to the Academy through the John L. Weinberg Charitable Trust and The John L. Weinberg Family Fund of The New York Community Trust.

Original Gift:

\$76,000

Current Value:

76,000

Restriction:

Gifts to the "Endowment Fund". No mention of purpose or permanent restriction on principal. Several Academy trustees report, however, that her intentions were that the gifts be

permanently restricted.

Quarterly anonymous gifts were made to the Academy over a period of time.

Original Gift:

\$300,000

Current Value: Restriction:

Donations were made as gifts to the Endowment Fund, and no mention has been found of the donor permanently restricting principal of the gifts or limiting use of the funds to a particular project or purpose. ed letters approving the Academy's draw upon the gifts he made to the Endowment Fund

supporting expenditures for general operations.

Periodic gifts were made to the Academy during the campaign period. Academy acknowledgments indicate application of the funds to the campaign or the Endowment Fund.

Original Gift:

\$536,000

Current Value:

100,000

Restriction:

None of the donor letters reviewed placed any restrictions on the

use of funds. No mention has been found of funds being

"permanently restricted".

lso signed letters

approving the Academy's draw upon gifts he made that were held in the Academy's Endowment Fund for use for capital and general

operating expenses.

A pledge of \$300,000 over a 3-year period was made and fulfilled.

Original Gift:

\$299,419

Current Value: Restriction:

transmittal or pledge letter was f

No donor transmittal or pledge letter was found in the files. Staff acknowledgements indicate that the gift commitment was "to the capital campaign to establish an endowment for the Academy". Signed note confirming the Academy's use of \$100,000 of his gift

for the support of operating expenses.

A pledge of \$75,000 was made in 1998 to be fulfilled over a five-year period.

Original Gift:

\$73,808

Current Value:

0

Restriction:

Donor imposed no restriction on the gift and asked that it be

allocated to the endowment fund.

A pledge of \$15,000 was made to the campaign in 1998, but only a portion of the pledge was fulfilled.

Original Gift:

\$10,000

Current Value: Restriction:

1,500

Pledge and gift acknowledgement letters from the Academy indicate that the commitment was to "the capital campaign to establish an endowment for the Academy" and that "funds will be added to the Academy's Endowment Fund". Donor did not fulfill

pledge and it was written down in the audit of 2003.

A gift of stock was made to the Academy by

Original Gift:

\$10,013

Current Value: Restriction:

The gift transmittal letter for 1998 indicates that it is simply a contribution to the Academy. No restriction on the funds is noted. The Academy's acknowledgment of this gift does not state that there is any restriction on the gift nor does it even indicate that it

was a gift to the Endowment Fund.

The Prince of Wales Foundation

The Academy applied to the foundation for a grant to provide scholarship support for students from the United Kingdom. A grant was awarded, and an endowment fund was established.

Original Gift:

\$100,000

Current Value:

100,000

Restriction:

Permanently restricted fund per donor. An endowed scholarship was established and donor requested that it support "in perpetuity"

"The Prince of Wales Scholar".

Gosnell/Lucelia Foundation

A gift was made to the Academy on 18 December 1998 to support the library and faculty salaries.

Original Gift:

\$50,000

Current Value:

50,000

Restriction:

The donor's gift transmittal letter is explicit defining this as a temporarily restricted operating grant to "purchase books, periodicals, slides, videotapes, etc. and the gift to support the faculty will increase faculty salaries..." The Academy in error has

treated this gift as a permanently restricted gift.

, and a rankel Foundation

A pledge of \$50,000 was made to the Academy late in 1998, which was to be fulfilled over 5 years. In the audit of 2002 the pledge was written down by \$24,000 as was not able to fulfill the original commitment. The Evan Frankel Foundation contributed toward the fulfillment of the pledge.

Original Gift: Current Value:

\$22,500 22,500

Restriction:

Once again the pledge is to the capital campaign and the

establishment of an Academy endowment, as noted in the Academy's thank you letter. There is no mention that the funds

are "permanently restricted".

s pledge was partially

fulfilled by a grant to the Academy from the Evan Frankel Foundation, and the file on this \$10,000 contribution reveals that the grant was unrestricted; the Academy thanked the foundation for the gift, not noting any restriction on use of the funds; and

the award ends up being recorded in the Academy's 990 report under permanently restricted endowment. Thus it appears that these are unrestricted and not permanently restricted funds.

now chairman of the board of trustees of the Academy, contributed to

the campaign.

Original Gift:

\$15,094

Current Value:

0

Restriction:

A letter dated 14 December 1999 from

states that

a gift of stock (approximately \$10,000) was being given to the Academy and the money from the gift was to be "put into the Academy's endowment." No further restriction was noted in the

donor's letter.

The Horace W. Goldsmith Foundation

A grant was made to the Academy in two separate payments.

Original Gift:

\$50,000

Current Value: Restriction:

50,000

The Foundation's award letters indicate that there was great

latitude in how the Academy could use the funds awarded. Thus it is not a permanently restricted endowment, although the Academy

has treated it as if it were.

In 1998 Trustee and Academy Treasurer:

afirms in a letter a pledge to

the Academy of \$35,000 to be paid over a 5-year period.

Original Gift:

\$32,652

Current Value:

_,--<u>-</u>

Restriction:

The pledge letter provided to the Academy places no restriction on

the use of the gift.

Erlebacher Fellowship Fund

The Academy and a faculty member established an endowed fund in honor of Walter Erlebacher. A list of donors and the amounts are attached on the following page.

Original Gift:

\$16,023

Current Value:

16,023

Restriction:

Set up as a permanently restricted scholarship fund, the earnings of which will eventually support a full-year student at the Academy.

2. With respect to the Prince of Wales Restricted Endowment, describe the nature, purpose and amount of this fund. Identify the extent to which this restricted fund has been invaded, if any, and the circumstances of any such invasions.

Please see above description of origin of the grant from the Price of Wales Foundation and its restrictions, purpose and current and original value. The fund has not been invaded and the principal remains in tact. (Original award letter for this grant is included in the following attachments.)

3. <u>Describe any efforts undertaken by the NYAA to ascertain whether its restricted assets were in any way impaired or misappropriated during the period that Robert Angona was rendering services to the NYAA and the results of any inquiry by the NYAA into this subject matter.</u>

After Robert Angona was terminated, we engaged several means of determining the extent of his employee dishonesty, misuse of Academy funds, misuse of the Academy credit card and fraud. First, we engaged IPSA, a respected private investigation firm, to investigate the extent of his dishonesty; second, Cohen, Greve & Company, our regular auditors, undertook an audit for the Fiscal Year 2004; third, there was an insurance investigation undertaken by Atlantic Mutual upon the Academy's submission of a claim (approximately \$35,000 in covered funds) under its employee dishonesty coverage. And finally, a forensic accountant, Thomas Harris, had been engaged before the discovery of Angona's illegal activities, and he had already begun to review and examine income and spending at the institution in preparation of an improved business plan. None of these investigative reviews have identified any inappropriate actions by Robert Angona with regard to the Academy's endowment.

Respectfully submitted,

Wayne A. Linker

Executive Director and Trustee

New York Academy of Art

Enclosures

EX- E

15-51-0-0007

MICHAEL A. RODI

ATTORVEY AT LAW

350 Broadway, Sune 1207 New York, New York 10013

Tel (2121565-935) Mobile (217) 459-5540 Fax (212) 965-9351

June 29, 2004

VIA FASCIMILE

Janet Lipinski
Assistant District Attorney
New York County
One Hogan Place
New York, NY 10013

(212) 335-8914

Re:

People v. Robert Angona Indictment Number: 02331-04

Dear Ms Lipinski

As per our telephone conversation on June 21, 2004, please accept this proffer on behalf of the above named defendant

The defendant can offer proof as to following illegalities and improprieties at the New York Academy of Art (hereinafter the 'Academy')

For a period between the years 2001-2002, \$1,050,000.00 was misappropriated from the Restricted Endowment going to Stephen Farthing and other officers of the Academy. The General Fund was depleted and showed a negative of \$300,000.00 at the time of this misappropriation

For a period between the years 2002-2003 the Academy would collect loan proceeds from a number of different banks for the same student during the same semester

For a period between the years 2002-2003 false scholarships of an average of \$500,000 a year were claimed by the Academy for its foreign students. No such scholarships were ever awarded on loan applications and INS Visa applications.

For a period between the years 2002-2003 the Academy misappropriated for private use equipment and donated materials. Randy Lerner and the Academy's Long Island School were the most abusive. The Academy's building manager was inappropriately given cash payments to move this equipment to Long Island. \$100,000 worth of cast statues was also misappropriated with various records being altered to hide the transfer.

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Page 2

For a period between the years 2001-2003, alcohol was illegally sold out of a café opened in the school by Stephen Farthing. No New York State liquor license or beer and wine license was ever obtained. Sales tax was neither collected nor paid to the State on these sales. Gross sales totaled approximately \$60,000,000 a year in this period.

Stephen Farthing, Randy Lerner and other officers of the Academy are most responsible for the acts outlined in this proffer.

The defendant has personal knowledge of many of these events as well as records of some of the transactions.

Please contact me if you find any of the information useful and would like to meet.

If you decide that there is nothing to be gained from my client's cooperation, please notify me. Please also be kind enough to notify me if you intend to prosecute my client's wife and I will arrange for her surrender.

Sincerely

Michael A. Rodi, Ekq

MAR/jr

Exhibit S

BRUSSELS

CLEVELAND COLUMBUS DAYTON NEW YORK WASHINGTON D.C.

December 15, 2004

BY HAND

James R. Pigott, Jr. Assistant Attorney General State of New York Office of the Attorney General 120 Broadway New York, New York 10271

RE: New York Academy of Art

Endowment Fund Inquiry: document production

Dear Mr. Pigott:

Enclosed please find documents responsive to the above-mentioned request for documents and interrogatories, returnable December 15, 2005.

At the top of the production is Wayne Linker's analysis and answers to your inquiries about the "endowment" funds. Behind that are a series of schedules, prepared by or for Mr. Linker to assist you in this inquiry. Finally, backup documentation, to the extent available, has been gathered and included as well.

We have not included copies of the Academy's Internal Revenue Service Form 990 Tax Returns, including annual financial statements, for the years 1998 through 2002, but they can be can be provided to you if requested.

If you have any questions, please do not hesitate to call me.

Very truly yours,

Douglas E. Grover

Douglas.Grover@ThompsonHine.com Phone 212.908.3920 Fax 212.809.6890

adr 127710.1



December 10, 2004

Response to the Letter of Inquiry, Dated 1 November, 2004, from Assistant Attorney General Robert Pigott, Charity Bureau, New York Attorney General's

- 1. The NYAA reports permanently restricted net assets on its IRS Form 990. With respect to such permanently restricted net assets:
- (i) Identify each separate fund or gift that makes up the total permanently restricted net assets, and for each such separate fund or gift identify (a) the nature of the restrictions to which the fund or gift is subject, (b) historic dollar value within the meaning of N-PCL 103(a)(16) and (d) the current market value.

Exhibit 1, attached, reflects the breakdown of each of the gifts/funds related to the information that has been reported on the Academy's IRS Form 990 in recent years. As my tenure with the Academy began on August 16, 2004, with the assistance of the Academy's accountant, I reviewed files and gift records relating to each of the funds which had been reported as "permanently restricted net assets." By and large, most of the funds, while often gifts to the "endowment" of the Academy, do not appear to have been made as "permanently restricted" by the donors, as defined under accounting rules. (See individual correspondence submitted herewith.)

In late 1997, Academy staff and trustees initiated a small fundraising campaign, the goal of which was to raise \$5 million for an endowment. Two phases of the campaign were envisioned: first, securing \$2 million in gifts and pledges from the members of the board of trustees of the Academy; and second, "going public" to raise the balance of funds from other sources. It appears that the Academy never implemented phase 2 of the fundraising

In the letters that I reviewed regarding the campaign, it appears that the request was for funds for a capital campaign or an endowment fund, and no mention has been found of solicitations seeking "permanently restricted funds". Conversations with the trustees who were on the board in 1997-99 as to the nature of the endowment campaign indicated that it was a very broad fundraising effort, and while it was hopeful that the proceeds from the campaign would generate annual income to sustain the institution, it was also envisioned

REDACTED

that these funds would constitute an operating reserve, an emergency fund and a source of funding for certain capital improvements.

By and large, the nearly \$1.6 million reported as permanently restricted funds in fact appear to be gifts given in support of an "unrestricted or board restricted endowment or quasi-endowment fund" as few donors indicated a restriction on principal or a purpose for the gift aside from "the campaign" or "the endowment". In some cases there were restrictions on the use or purpose of the funds (Temporarily Restricted gifts and grants), but the Academy seems to have directed these gifts as well to the endowment. In a number of instances, based on the gift award letters, the gifts or grants appear to be totally unrestricted.

Based on these findings, I spoke with the Academy's auditor (in her 7th year of service to the Academy and thus covering the entire period during which "permanently restricted" funds were reported in the audit report and the IRS Form 990.) She appears to have accepted staff statements that these funds were permanently restricted gifts based on the use of the term "endowment," which in her mind is/was synonymous with "permanently restricted endowment". I have been unable to determine why certain gifts or grants which were clearly intended for operating purposes or were fully unrestricted by the donor were classified as "permanently restricted" on the IRS Form 990 or in the Academy's audit.

2

ANNOTATED DESCRIPTIONS OF GIFTS, DONATIONS AND GRANTS TO THE ACADEMY'S ENDOWMENT FUND AS LISTED IN IRS FORM 990

Several gifts were made to the Academy through the John L. Weinberg Charitable Trust and The John L. Weinberg Family Fund of The New York Community Trust.

Original Gift: Current Value:

\$76,000 76,000

Restriction

Gifts to the "Endowment Fund". No mention of purpose or permanent restriction on principal. Several Academy trustees report, however, that her intentions were that the gifts be

permanently restricted.

Quarterly anonymous gifts were made to the Academy over a period of time.

Original Gift:

\$300,000

Current Value:

Restriction:

Donations were made as gifts to the Endowment Fund, and no mention has been found of the donor permanently restricting principal of the gifts or limiting use of the funds to a particular project or purpose. ed letters approving the Academy's draw upon the gifts he made to the Endowment Fund supporting expenditures for general operations.

REDACTED

Periodic gifts were made to the Academy during the campaign period. Academy acknowledgments indicate application of the funds to the campaign or the Endowment Fund.

Original Gift:

\$536,000

Current Value:

100,000

Restriction:

None of the donor letters reviewed placed any restrictions on the

use of funds. No mention has been found of funds being "permanently restricted". Iso signed letters

approving the Academy's draw upon gifts he made that were held in the Academy's Endowment Fund for use for capital and general

operating expenses.

A pledge of \$300,000 over a 3-year period was made and fulfilled.

Original Gift:

\$299,419

Current Value:

O

Restriction:

No donor transmittal or pledge letter was found in the files. Staff acknowledgements indicate that the gift commitment was "to the capital campaign to establish an endowment for the Academy". Signed note confirming the Academy's use of \$100,000 of his gift for the support of operating expenses.

A pledge of \$75,000 was made in 1998 to be fulfilled over a five-year period.

Original Gift:

\$73,808

Current Value: Restriction:

Donor imposed no restriction on the gift and asked that it be

allocated to the endowment fund.

A pledge of \$15,000 was made to the campaign in 1998, but only a portion of the pledge was fulfilled.

Original Gift:

\$10,000 1,500

Current Value: Restriction:

Pledge and gift acknowledgement letters from the Academy

indicate that the commitment was to "the capital campaign to establish an endowment for the Academy" and that "funds will be added to the Academy's Endowment Fund". Donor did not fulfill

pledge and it was written down in the audit of 2003.

REDACTED

A gift of stock was made to the Academy by

Original Gift: Current Value:

\$10,013

Restriction:

The gift transmittal letter for 1998 indicates that it is simply a contribution to the Academy. No restriction on the funds is noted. The Academy's acknowledgment of this gift does not state that there is any restriction on the gift nor does it even indicate that it was a gift to the Endowment Fund.

The Prince of Wales Foundation

The Academy applied to the foundation for a grant to provide scholarship support for students from the United Kingdom. A grant was awarded, and an endowment fund was established.

Original Gift:

\$100,000 100,000

Current Value: Restriction:

Permanently restricted fund per donor. An endowed scholarship was established and donor requested that it support "in perpetuity"

"The Prince of Wales Scholar".

Gosnell/Lucelia Foundation

A gift was made to the Academy on 18 December 1998 to support the library and faculty salaries.

Original Gift: Current Value:

\$50,000

Restriction:

50,000

The donor's gift transmittal letter is explicit defining this as a temporarily restricted operating grant to "purchase books, periodicals, slides, videotapes, etc. and the gift to support the faculty will increase faculty salaries..." The Academy in error has

treated this gift as a permanently restricted gift.

. 75, and a rankel Foundation

A pledge of \$50,000 was made to the Academy late in 1998, which was to be fulfilled over 5 years. In the audit of 2002 the pledge was written down by \$24,000 as was not able to fulfill the original commitment. The Evan Frankel Foundation contributed toward the fulfillment of the pledge.

Original Gift: Current Value:

\$22,500 22,500

Restriction:

Once again the pledge is to the capital campaign and the establishment of an Academy endowment, as noted in the Academy's thank you letter. There is no mention that the funds are "permanently restricted". a pledge was partially

fulfilled by a grant to the Academy from the Evan Frankel Foundation, and the file on this \$10,000 contribution reveals that the grant was unrestricted; the Academy thanked the foundation for the gift, not noting any restriction on use of the funds; and

REDACTED

the award ends up being recorded in the Academy's 990 report under permanently restricted endowment. Thus it appears that these are unrestricted and not permanently restricted funds.

now chairman of the board of trustees of the Academy, contributed to

the campaign.

Original Gift:

\$15,094

Current Value:

Restriction:

A letter dated 14 December 1999 from

states that

5

a gift of stock (approximately \$10,000) was being given to the Academy and the money from the gift was to be "put into the Academy's endowment." No further restriction was noted in the

donor's letter.

The Horace W. Goldsmith Foundation

A grant was made to the Academy in two separate payments.

Original Gift:

\$50,000

Current Value:

50,000

Restriction:

The Foundation's award letters indicate that there was great latitude in how the Academy could use the funds awarded. Thus it is not a permanently restricted endowment, although the Academy

has treated it as if it were.

In 1998 Trustee and Academy Treasurer.

nirms in a letter a pledge to

the Academy of \$35,000 to be paid over a 5-year period.

Original Gift: Current Value: \$32,652

Restriction:

The pledge letter provided to the Academy places no restriction on

the use of the gift.

Erlebacher Fellowship Fund

The Academy and a faculty member established an endowed fund in honor of Walter Erlebacher. A list of donors and the amounts are attached on the following page.

Original Gift: Current Value:

\$16,023 16,023

Restriction:

Set up as a permanently restricted scholarship fund, the earnings of which will eventually support a full-year student at the Academy.

2. With respect to the Prince of Wales Restricted Endowment, describe the nature. purpose and amount of this fund. Identify the extent to which this restricted fund has been invaded, if any, and the circumstances of any such invasions.

Please see above description of origin of the grant from the Price of Wales Foundation and its restrictions, purpose and current and original value. The fund has not been invaded and the principal remains in tact. (Original award letter for this grant is included in the following attachments.)

3. Describe any efforts undertaken by the NYAA to ascertain whether its restricted assets were in any way impaired or misappropriated during the period that Robert Angona was rendering services to the NYAA and the results of any inquiry by the NYAA into this subject matter.

After Robert Angona was terminated, we engaged several means of determining the extent of his employee dishonesty, misuse of Academy funds, misuse of the Academy credit card and fraud. First, we engaged IPSA, a respected private investigation firm, to investigate the extent of his dishonesty; second, Cohen, Greve & Company, our regular auditors, undertook an audit for the Fiscal Year 2004; third, there was an insurance investigation undertaken by Atlantic Mutual upon the Academy's submission of a claim (approximately \$35,000 in covered funds) under its employee dishonesty coverage. And finally, a forensic accountant, Thomas Harris, had been engaged before the discovery of Angona's illegal activities, and he had already begun to review and examine income and spending at the institution in preparation of an improved business plan. None of these investigative reviews have identified any inappropriate actions by Robert Angona with regard to the Academy's endowment.

Respectfully submitted,

Wayne A. Linker

Executive Director and Trustee

New York Academy of Art

Enclosures

Exhibit T

Stand : 27-Avs 33044 LSR, P. Document 28-6

ATTORNEYS AT LAW

315 Greenwich Street 4th Floor Filed 7.07, $20/2007_{1001}$ age 51 of 59

212.226.8787 212.226.3619 fax www.sladelaw.com

July 30, 2004

BY EXPRESS MAIL

Ray Page, AIC General Adjuster GAB Robins NA, Inc. Suite 510 PO Box 80705 (30366) Atlanta, Georgia 30341

Re: Claim No. 33955682, Atlantic Mutual Ins. Co., 760-00-65-000 New York Academy of Art

Dear Mr. Page:

Enclosed is the notarized Proof of Loss for this claim, of which Atlantic Mutual was originally put on notice in April of this year. Please note that the loss was not discovered until April 14, 2004, less than 120 days ago. I do not understand where your questioned date of January 23, 2003 came from, but it bears no relation to this claim.

We are of course ready to provide any additional information that Atlantic Mutual would request. I understand that we will be contacted by an adjuster, and I look forward to working with the adjuster to resolve this claim.

Best regards.

Sincerely,

Jeffrey C. Slade

cc: Ms. Jackie Le Donne (by regular mail)

Jeffrey C. Slade jslade@sladelaw.com

Lawton P. Cummings Maria Tzokova

Chinyere Okoronkwo Of counsel

Document 28-6

Filed 07/20/2007Proof of of Ss - Fidelity

Use Page 2 to Calculate Credits and Loss(es)

	Claim No. 33955682
Insured: New York Accelerny of Art	Policy No. 7/ "
Employee's full name "Rubert J. Angrica" alta Julin R. Bli Last known address 405 E. 54th Sr. #78 NY NY	um C Social Security No Link nown Chr
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Loss occurred between 6/13/03 and	DESCRIBE AND STEMEZE ON NEXT PAGE 2/5/6/6/4 MONTH-CAY-YEAR
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at the claimant's former employee named herein has dishonestly converted ands of the claimant equal to the net amount of claim indicated in this state a reverse side hereof constitute a complete and truthful recital of all the second suppressed or withheld by the claimant.	d to his (her) own use and misappropriated sement-, that the statements above and on facts as now known, and nothing material
ny person who knowingly and with intent to defraud any insurance of the containing any materially false information, or controlled the concerning any fact material thereto, commits a fraudulent	company or other person files a state-
orn to and subscribed before me	
is 26th day of July 19	
	J. J. Z.

JEFFREY C. SLADE

Notary Public, State of New York

No. 02SL4715213

Qualified in New York County

Commission Expires November 30, 20 Cb

Following 1:50an Remixed statement of claim showing all credits to be applied against the loss. Submitted herewith is all available documentary evidence in substantiation thereof. Description of Itam Amount (8122-03 -> Paymeds to consontion contolled by mr. 1130/04 "Afric" for which is work was done B18,550 see Exhibit D @ 1217/03-7 Unauthorized passed express chard to \$ 11,556 216/04 Academy's MBNA creditions. Sec EXPRITE 3 6(13/05-7 Unauthorized personal expenses charged to 12/3/03 According & Americal Expensional Cord. See Exhibit F 81183249 (4) 8130(03-7) Reindurant for unauthorized exardition 12/8/03 \$1 3,459 69 by the Infance or First Hahalfan Group, Mr. Argana's Company, Seetxh, b.76. Expense of IPSH investigated to assist in evaluating claim. See Fxhibit H \$41,865.8Y Easonor of Slade & Associates to involtigate claim. See Exhibit I. B28,090.00 Total Loss > \$105,353.10 Credits: Salary Commission Cash Bond Other Credits Total Credits > Net Loss > 105 353.10 L-2399 0699

Claim No.

Rider A

The losses were sustained as a result of illegal conduct by the Controller of the New York Academy of Art, a person known to the Academy as "Robert J. Angona." Mr. "Angona" was first hired as a part-time employee in March 2002 and was later promoted to full-time Controller. During the relevant period, he was employed pursuant to a contract with his company, The First Manhattan Group, Inc. A copy of the employment contract is attached as Exhibit A. The Academy no longer has a personnel file for Mr. "Angona" and believes that Mr. "Angona" surreptitiously removed that file from the Academy's offices.

The first of the losses were discovered by Academy staff, working with Executive Director Stephen Farthing, on April 14, 2004. Subsequently, counsel for the Academy, Jeffrey C. Slade, and an investigate agency, IPSA International, directed the investigation. Two reports by IPSA International are attached as Exhibit B. The losses are detailed on the schedule that is being submitted herewith.

Following initial discovery of the losses, the facts of Mr. "Angona's" criminal activities were disclosed to the Manhattan District Attorney's Office by counsel, Mr. Slade. With the full cooperation of the Academy, including the Grand Jury testimony of Executive Director Farthing, the District Attorney obtained an indictment of Mr. "Angona." A copy of that indictment is attached as Exhibit C. Mr. "Angona" was arrested and remains incarcerated, to the best of the Academy's knowledge. The criminal case is still pending and is currently being handled by Assistant District Attorney Janet Lipinski, telephone number 212-335-4035. As a result of the arrest, we learned that Mr. "Angona's" real name is apparently John Blumatte.

Ag
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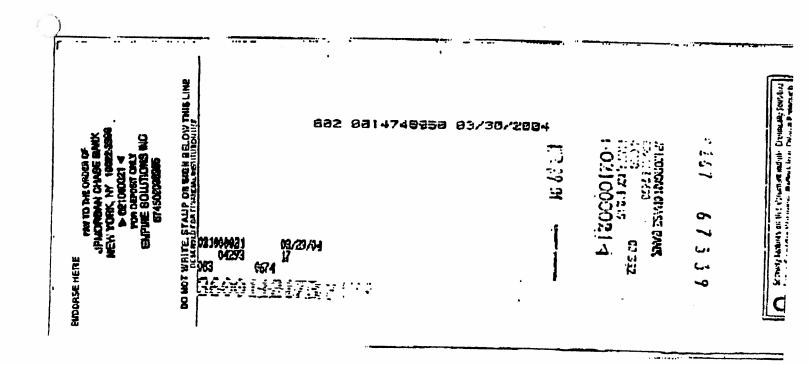


EXHIBIT U

The First Manhattan Group Inc.

226 East 54th Street Suite 306 New York, New York, 10022 212-980-3510 (Fax) 212-980-3523

April 13, 2004

Stephen Farthing New York Academy of Art 200 West 57 Street 808 New York, New York 10022

Dear Mr. Farthing,

This letter will confirm that you have constructively terminated my services as Controller of the Academy, on orders of the Chairman.

The usurpation of the duties of the Controller by You, the Chairman, and Mr. Wilkinson (A Trustee) is inappropriate at a time that I am wrongfully Accused of being part of their wrong doings. This appears to be a cover Up of allegations, and your actions prevent me from performing my Duties, making my efforts without purpose, and is a clear violation of my Contract.

We have been in constant contact with our Attorneys and as of today had Agreed that both my self and John Cleary will appear on Friday at Doug Grovers Office at 5pm after we filed our reports with the Police Agencies. At 3pm after this arrangement you terminate my services.

As you know I would than proceed to conduct an internal audit into The allegation currently being associated with Levinson, Lerner, and Wilkinson to which I have been attached.

Other violations of my contract is ordering me to issue funds And receive funds from corporations to clear private debts of The chairman.

Being barred from the Academy as a contributor and ticket holder Is outrageous.

As Controller and a \$30,000 plus contributor I have the standing and the duty to bring an action that Pivar does not. I also have a duty to report Wrong doings to the appropriate agencies.

I shall use all legal means to enforce the provisions of my contract.

Yours truly,

Robert Angona